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ABSTRACT

Privacy is defined and its various social implications discussed in the first part of this paper. The effect of a National Data Center (NDC) and computerized dossiers about people and their past is also considered. It is determined that a computerized information system would present at least four distinct problems to individual identity or self-image. First, a person's self-identity may either be reinforced if the information agrees with the individual's perception, or it may conflict if the information is not in agreement or inaccurate. The second problem involves the extent an individual may rely on his files in constructing his self-identity. The third problem inherent within the schemata to develop a NDC is the depersonalizing effect associated with the use of computers. The fourth crises to personal identity would be presented by the capability of computers to perform inferential relational retrieval and interpretation. Reasons which have been cited as justification of the need and benefit of constructing a NDC are also considered, including McLuhan's attitude toward privacy as presented in his theory of the "Global Village." (LL)

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THE IMPACT OF A NATIONAL DATA CENTER ON INDIVIDUAL PRIVACY

by
Robert Sutton

> The computer, with its promise of a millionfold increase in man's capacity to handle information, will undoubtedly have the most far-reaching social consequences of any contemporary technical development. The potential for good in the computer, and the danger inherent in its misuse, exceed our ability to imagine.... We have actually entered a new era of evolutionary history, one in which rapid change is a dominant consequence. Our only hope is to understand the forces at work and to take advantage of the knowledge we find to guide the evolutionary process.[1]
>
> --Dr. Jerome B. Wiesner, former Science Advisor to President Kennedy.

The advent of a new technology has always meant both promise and peril to mankind. Technological innovation has presented the opportunity for either social development or destruction. And so it is with the impending creation of computerized communication and information retrieval systems. The impetus for this investigation was a recognition of the profound consequences data banks would have upon society and the individual, especially in the area of privacy. Already the "growing pains" are being felt and have given rise to numerous essays, reports, research projects and government hearings investigating the relationship of computer data banks with individual liberty and privacy.

The major questions to be addressed in this particular paper are: 1) What effects will a National Data Center (NDC) have upon individual privacy; and 2) What kinds of measures are available and appropriate to control and direct the use of a NDC? Several other areas will, of necessity, be discussed in the course of responding to the above questions: 1) What is privacy with regard to the individual and society; 2) What is the nature of computerized data systems and the forces actuating their growth; and 3) What is the legal status of privacy and what sort of legal restrictions or regulations would prove accommodating?

The Individual and Social Elements of Privacy

The term privacy, as will be readily seen, has a number of dimensions that make it difficult to be precise. Edward Shils defines privacy as a "sero-relationship between two persons, or two groups, or between a group and a person...within contexts in which...interaction, communication, or

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perception is practicable--i.e., within a common ecological situation."[2] Thus, for Shils, privacy and intrusions of privacy are relevant only in contexts where "the isolation of a person or a group can be breached."[3] But privacy is more than communication withheld. Charles Fried notes that privacy is "necessarily related to ends and relations of the most fundamental sort: respect, love, friendship, trust."[4] So Fried is suggesting that privacy is also a feeling, an atmosphere of security in being able to control information about ourselves. Perhaps the most comprehensive definition of privacy is offered by Alan F. Westin:

> Privacy is the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others. Viewed in terms of the relation of the individual to social participation, privacy is the voluntary and temporary withdrawal of a person from the general society through physical or psychological means, either in a state of solitude or small-group intimacy, or, when among larger groups, in a condition of anonymity or reserve. The individual's desire for privacy is never absolute, since participation in society is an equally powerful desire. Thus each individual is continually engaged in a personal adjustment process in which he balances the desire for privacy with the desire for disclosure and communication of himself to others, in light of the environmental conditions and social norms set by the society in which he lives. The individual does so in the face of pressures from the curiousity of others and from the processes of surveillance that every society sets in order to enforce its social norms.[5]

To comprehend the relationship of individual privacy to "the self" we should pay particular attention to the functional dimension of privacy. This is especially true with regard to role-playing. Role behavior can be defined as behavior--conscious or unconscious--by which an individual presents the case and then assumes a "pose" by which other individuals identify him.[6] Not every fact about ourselves is consistent and, indeed, the roles themselves may be inconsistent. Thus the ability to assume a role depends upon the ability of an individual to determine the particular amount of his "true"self--both past and present--that he wishes revealed at any one particular time. There are many reasons why individuals choose to assume roles or masks, two of them relative to the present discussion would be to "put our best foot forward" and to obtain a fresh start. The individual's prior control over the disclosure of socially undersirable information may be superceded by computerized dossiers available to employers, creditors, governmental agencies and the like. In addition, whereas one could move to the next town to escape a former indiscretion a few years ago, now there is no escaping the past. Computerized records of past conduct follow people across time and distance.

Society must have the means to forget past transgressions and minor deviations we all have made. The preservation of some opportunity for society to forget is essential for many reasons: 1) to maximize individual human productivity and accomplishment; 2) to reduce the fears of the populace that the past can always haunt them; 3) to promote the improvement of both the economic and moral level of the individual; and 4) to protect all individuals in their own sense of self-esteem by allowing almost forgotten details to destroy the developed idea of individual selfworth.[7]

Moore and Tumin stress the vital importance to social stability of preventing deviation from being known to the group as a whole.[8] Undoubtedly, the publication of all of the sins, crimes, and errors that take place in a social unit would jeopardize its stability. Erving Goffman observes the construction of "involvement shields" for its members wherein "role releases" may take place, particularly deviant ones.[9] Robert Merton concurs:

> Resistance to full visibility of one's behavior appears, rather, to result from structural properties of group life. Some measure of leeway in conforming to role expectations is presupposed in all groups. To have to meet the strict requirements of a role at all times, without some degree of deviation, is to experience insufficient allowances for individual differences in capacity and training and for situational exigencies which make strict conformity extremely difficult. This is one of the sources of what has been elsewhere referred in this book as socially patterned, or even institutionalized, evasions of institutional rules.[10]

Applying Merton's contention to the situation in question, namely the effect of a NDC on privacy, we may be creating social dysfunction and reducing cohesion among constituent members by allowing all agencies access to information gathered by a given group or agency for a specific purpose. At least we should examine the possibility carefully to evaluate the data to be exchanged in order to minimize this serious risk.

Another consideration concerns the relationship of computerized dossiers about a person's past, associations, and projected potential (i.e., educational and psychological testing) with individual identity. The term "identity" has almost as many meanings as there are theories that employ it.[11] Generally, these various theories can be divided into two major groupings: one group is employed primarily by social psychologists and focuses on the social interaction of individuals and their ability to occupy a firm place in the community; the other group is primarily associated with psychoanalysts, and concentrates on the individual's awareness of his self-sameness and continuity.[12] The former approach has been discussed with regard to role behavior, so it is the latter conceptualization which will now be covered in light of the effects of computerization.

A computerized information system would present at least four distinct problems to individual identity or self-image. First, a person's self-identity may either be reinforced if the information agrees with the individual's perception, or it may conflict if the information is not in agreement or inaccurate. This, of course, can occur at the present with manual filing systems, but it points to an added consideration of how much or what kinds of information should be revealed to the subject of a dossier for his own psychological well-being?

The second problem involves the extent an individual may rely on his files in constructing his self-identity. The phenomenon of a mirror-image concept of self-identification as perceived through the eyes of others has been promulgated by Strauss. With increasing depersonalization, "the tendency to depend for placement and advancement on what can be revealed about onself which can be evidenced and acted upon 'scientifically' may well increase."[13] In other words, the individual may come to believe that he "really" is what his file says he is. On the "flip-side" of this issue of reliance upon such computerized data, is the possible effect even if the files are correct.

> To some extent, illusions about ourselves may be desirable, at least insofar as we conceive ourselves to be better than we really are. Such distortions of fact may permit us to transcend limitations reflected in our records, and provide the motivation to strive for higher goals than otherwise we might. By permitting self-identity to incorporate, at least to some extent, the feature of illusion, we may provide the most favorable environment for individual self-actualization, that is for each person to develop his fullest potential.[14]

The third problem inherent within the schemata to develop a NDC is the depersonalizing effect associated with the use of computers. The human element will be extracted from traditional relations with government, employer and others. The established mode of analysis, evaluation and planning, personnel selection, and decision making has always been dependent on data usage, but it has always been governed by humans. The elimination of the human element may create anxiety in the individual by implicitly questioning his worth as an autonomous individual.[15] Professors Johnson and Kohler have warned against turning over to computers questions with which man is better able to cope:

> It (computer technology) is being called on to act for man in areas where man cannot define his own ability to perform and where he feels uneasy about his own performance--where he would like a neat, well-structured solution and feels that in adopting the machine's solution he is closer to the "right" than he is in using his own.[16]

The fourth crises to personal identity would be presented by the capability of computers to perform inferential relational retrieval and interpretation. The computer can compile and collate data to breed additional information through inference, so the whole (the "computer-identity") may be greater than the sum of its parts (the specific information collected).[17]

It is apparent that the relationsnip of self-identity and the disclosure of information to government data banks is complex and confusing. Adding to the confusion is the abundance of rhetoric contending that privacy is some sort of sacred, indivisible, God-given attribute without which man would cease to be human. This position, in my opinion, merely serves to inhibit a rational appraisal of the nature and function of privacy. It has become clouded by an association with democratic political ideals. To understand the significance of such associations with Western democratic philosophy, the concept of autonomy would prove enlightening.

Essentially, autonomy is the notion that man is self-directing and self-determining. A distinction between internal and external autonomy has been made; the internal being an awareness on the part of the individual that he is free, while the external aspect of autonomy is usually called "freedom." Internal autonomy is thought to account for each individual's uniqueness by fostering such psychological traits as personality and individuality.[18] The development of this individuality has been traced to a fear of being wholly dominated by another.[19] Because he chooses what others may know about him, the individual thus exercises autonomy and develops what is called individuality.[20]

> The loss of internal autonomy has subtle effects on the individual. If one feels he can no longer control the disclosure of data about his personal actions and beliefs, he will tend to conform those actions and beliefs to whatever standard will maximize the achievement of his social, economic, or other objectives, or conversely, whatever will avoid censure or other sanctions....[21] In addition, when one has been compelled to conform, he needs assurance that others are conforming. This need further leads to a justification of the exposure of others' personal intimate lives in order to insure that they are in fact conforming.[22]

External autonomy can be defined negatively as that which ceases to exist when the individual's control over his own conduct is forfeited to or usurped by society. It is the overt, expressive dimension--the acting out of freedom. However, it is the internal aspect of autonomy that permits such behavior, for when the individual no longer "feels" that he is free, he has in reality lost his ability to exercise that freedom.[23] What this means is that "freedom," in the sense we have defined it with regard to the individual and privacy, is an external derivitive of an internal

sensation. It has, indeed, become formalized and institutionalized within the social structure of custom, law, and political theory, but the fact should be emphasized that "the extent to which our society becomes more of an open one depends not on the role of government in the collection and storage of information, but on the extent to which individuals deem greater disclosure to be in their best interest."[24] The relativistic nature of privacy cannot be denied when one considers the strong opposing forces for disclosure operating within both the individual and society.

People find emotional release from pressures, tensions and anxieties (no this is not an Anacin commercial!) through disclosure of their problems they may have been suffering in solitude with heretofor. Shils has noted, "the common good cannot be realized in a society consisting only of private entities..."[25] Furthermore, people have a strong desire to identify with others in order to discover what others are like and for self-appraisal. The "open society" may be one in which undesirable levels of shame and anxiety can be eliminated and tolerance maximized. The effect of the Kinsey Reports upon opening our society and increasing our self-awareness and tolerance of presupposed deviant conduct was an example of what we might expect to occur with generally increased disclosure.

Effects of Computerized Data Systems

There are, of course, many reasons cited as justification of the need and benefit of constructing a NDC. Economists and social scientists feel that we need more precise information in order to make better judgements and to initiate proper policy. The acquisition of new scientific information alone is approaching a rate of 250 million pages annually (which causes speculation about the proportion of time and energy future generations will expend merely to pass on past knowledge to the next generation). Duplication of efforts is cited as an economic factor. Also the cost of a field survey may account for 95% of the total cost of a study while the cost of processing the data requires only 5%, which means that computers would enable a savings in time, efficiency, duplication, and money. Even now, the massive tabulations published by various government agencies for use by other agencies and corporations in printed form only necessitate putting them back into computer form to analyze, whereas an interagency NDC would circumvent this tedious task. Although the proposed NDC would be for statistical information only, it should be remembered that you can extract intelligence from a statistical system and extract statistics from an intelligence system.[26]

Paul Baran, a computer expert with RAND corporation, points to the fact that computer banks have already begun to link up. The pattern of growth for communications and transportation systems has been historically the formation of "natural monopolies." A self-agglomerating, de facto version of such a data system is that of the airlines or credit bureaus.[27] The development passes through several stages. First, much of the routine clerical work is transferred to a single large computer with only a few humans nearby allowed to interrogate the system. Next, the number of people allowed to interrogate the system directly increases. Then the geographical distance between the machine and users increases. Finally, separate systems are tied together to improve efficiency.[28]

The ability of a privacy invader to obtain access to the "historical self" has been determined in the past by several factors:

1. The ability of the privacy invader to bring together data which has been available, but which has been uncollected and uncollated;

2. The ability of the invader to record new data with the precision and variety required to gain new or deeper insight into the private person;

3. The ability of the invader to keep track of a particular person in a large and highly mobile population;

4. The ability of the invader to get access to already filed data about the private person; and

5. The ability of the invader to detect and interpret potentially self-revealing private information within the data to which he has access.[29]

Obviously, as has been discussed in prior sections of the paper, the computer provides the means to circumvent these former safeguards or hinderances to privacy invaders. Even without computerized data banks sharing information, there has been a trend away from confidentiality of information the Federal government has obtained about individuals. We should not reject the myriad of services and advancements computers can contribute to our life merely because they present a difficult and profound threat to individual privacy. It is my belief, after examining many proposed remedies, that a viable accord can be reached between the conflicting forces under discussion. First, there are a number of technological and procedural safeguards which can be integrated into a NDC of the proposed type. Due to the fact that these technological safeguards cost from 3 to 10 times the cost of the system itself, manufacturers have been reluctant to install them.[30] However, a single installation, such as a NDC, would lend itself to "hardening" for protection against the system being compromised. Let us not fool ourselves. No system is foolproof (or smart proof as Baran phrases it). But the risk can be minimized appreciably if society decides that technology must conform to the most basic of all human principles, the maxim of the mutuality of liberty: One man's liberty of action ends where it would injure another man's.[31]

In addition to technological safeguards, society must--at least during the transition to what might be termed "electronic age"--look to laws and legislation for protection.

Privacy and the Law

With respect to the question of the individual's protection of the right of privacy under the law, we find "today's legal structure characterized by uncertain application, lack of predictability, frequent inconsistency,

unawareness of the ramifications of the new communications media, and an almost total disregard for the individual's right to participate in information transactions that may have a profound impact on his life. The existing patchwork of common-law remedies, constitutional doctrines, statutes, and administrative regulations is not capable of dealing with the problems raised by the accelerating pace of federal information gathering and the emergence of computerized information systems."[32] In fact, one distinguished federal judge was moved to characterize the state of the law of privacy by likening it to a haystack in a hurricane.

Unfortunately, the more than 300 court decisions related to privacy have been narrowly construed, thus granting the individual very limited protection against government obtrusiveness. Much of the problem with legal recourse has been the fault of the haphazard development of privacy as a legal tort. Many of the concepts promulgated by Samuel Warren and Louis Brandeis in their article, "The Right to Privacy" of 1890 have fallen prey to what Oliver Wendell Holmes called "One of the misfortunes of law [is] that ideas become encysted in phrases and thereafter for a long time cease to provoke further analysis." Most of the issues were debated by 1910 and have only recently been re-evaluated in light of modern difficulties and developments in the communications field.

Some, like Harry Kalven Jr., contend that privacy seems a less precise way of approaching more specific problems, as for example in the case of freedom of speech, association and religion. Also, there is always the possibility, according to Kalven, that it cannot be used to delimit the public sphere, but will turn out invariably to be residual, simply what is left after the state of society has made its demands.[33]

Dean Prosser argues that the privacy decisions fall into four divisions: 1) Intrusion upon the plaintiff's seclusion or into his private affairs; 2) Public disclosure of embarrassing facts about the plaintiff; 3) Publicity which places the plaintiff in a "false light" in the public eye; and 4) Appropriation, for the defendant's advantage, of the plaintiff's name or likeness. The interest protected in the first and second cases is freedom from mental distress; in the third, interest in reputation; and in the fourth, interest in propriety over name and likeness. Prosser says that these represent a composite of old torts.[34]

Bloustein suggests that all privacy tort cases in the future should involve some interest in preserving human dignity and individuality, rather than emotional tranquility or reputation. It is hoped that proper identification of the underlying social values will clarify and strengthen the concept of privacy.[35]

Another possibility that has been suggested is to view privacy in terms of defamation of character, thereby granting the individual the right to confront sources who have gathered and utilized information without the person's knowledge.[36]

It should be remembered that the Constitution represents the minimum, not the maximum protection of individual rights, so we should have affirmative laws. Regrettably, legislation will, for the most part, prove to be ineffective in coping with the sweeping dimensions of change wrought by the computerized environment. Laws will prove to be helpful with regard to initial design by protecting against potentially "weak" systems being built, thereby discouraging wouldbe tamperers by increasing their costs, but regulation of much of computerized data system's activity will prove fruitless. One laughable attempt has been to propose treating information systems as "Interstate commerce" and placing it under the regulation of the I.C.C.

What then will be the ultimate fate of individual privacy in the coming "electronic age?"

The Computer, Privacy, and Individuality a la McLuhan

When concerned with "ultimates," McLuhan is as pertinent as anybody else when it comes to the impact of the computer on man and his environment. For McLuhan, the electronic media (which includes computers) ring the death knell for fragmentation, specialization, detachment, privacy, and the individual as we know him. "Too many people know too much about each other. Our new environment compels commitment and participation. We have irrevocably become involved with and responsible for, each other."[37]

With respect to individuality in society, McLuhan writes:

> Electronic circuitry profoundly involves men with one another.... Print technology created the public. Electronic technology created the mass. The public consists of separate individuals walking around with separate fixed points of view. The new technology demands that we abandon the luxury of this posture, this fragmentary outlook.[38]

The term, "Mass Society," has been said to characterize a society with complete loss of individuality, total conformity, and perhaps a strong aversion to society's members having their own self-identity. Olson says, "People respond to central agencies run by an elite so that their behavior comes to be controlled by that elite. They are subject to events beyond their control and their self-identity is transformed into societal-identity."[39]

McLuhan believes we are merely indulging in an "orgy of Rear-view mirrorism" by clinging to soon to be outmoded concepts as privacy and individualism. He foresees using the computer to program and orchestrate the galactic environment in a dialogue of cultures as intimate as speech.

Privacy, in McLuhan's "Global Village," is a hinderance to human interaction, and interdependence. Perhaps this is so. Perhaps we should embrace the coming electronic era of man and accede to its requirements for disclosure. For the present, though, the transition can be appreciably eased by the judicious regulation of automated data systems, self-regulation by the computer industry to insure the availability of proper and sufficient safeguards, and by public recognition of the individual rights involved.

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16. op. cit., Invasion, p. 306.

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23. op. cit., UCLA, p. 1422.

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